

Battery Co. Says Counterclaims In \$100M IP Suit Lack Juice

By **Lauren Berg**

Law360 (February 7, 2019, 5:32 PM EST) -- A company that provides uninterrupted power systems to data centers asked an Illinois federal judge Wednesday to trim counterclaims lodged by private equity-backed Vertiv Group Corp. in a \$100 million trade secrets fight, arguing that Vertiv's allegations don't offer any details about supposedly victimized customers.

LiiON LLC said in its motion that Vertiv's counterclaim that LiiON engaged in tortious interference with Vertiv's business relationships with its customers can't stand up because Vertiv does not offer any details about said customers, apart from one called QTS.

"It is improper to bring a cause for tortious interference for customers that are not named or detailed in some way," LiiON said, asking for the claim to be dumped with respect to any customers other than QTS.

Vertiv also does not claim there was any intentional or unjustifiable inducement of a breach or termination of its relationship with its customers, including QTS, LiiON said. Vertiv only claims that LiiON took actions against it.

"Moreover, defendant Vertiv completely fails to allege any facts that LiiON had any contact or direct interference with QTS or any other customer," LiiON said.

LiiON **sued its onetime collaborator** — now its rival — Vertiv in September, accusing it of causing around \$100 million in damages by improperly using and sharing its trade secrets, not only for itself, but also passing them to LiiON's competitor, Samsung. LiiON worked for years to develop a lithium-ion uninterruptible power solution system that didn't need regular battery replacements and could be properly controlled.

LiiON's relationship with Vertiv started in May 2013 when it sent a prototype of the company's battery to Emerson Power Network, Vertiv's former name, the suit said. The complaint said a nondisclosure agreement was struck between the two entities later that year.

In March 2014, the companies struck another agreement that allowed Vertiv to sell LiiON products for use in a Chicago data center.

Toward the end of 2017, Vertiv canceled an order with LiiON and began marketing products with LiiON's technology without paying LiiON royalties and without its permission, according to the suit.

Vertiv filed its counterclaims on Jan. 11.

In its motion Wednesday, LiiON argued that Vertiv's claims seeking declaratory judgment that it did not misappropriate trade secrets or breach the nondisclosure agreement should be dismissed as unnecessary because LiiON has already claimed violations of trade secret acts and breach of contract against Vertiv, which are currently pending under Vertiv's motion to dismiss.

"[A]ll issues contemplated in [Vertiv's] declaratory judgment counts are already being litigated by the parties in this matter," LiiON said.

LiiON also asserts that Vertiv did not include any factual details, other than to deny its misappropriation of trade secrets, and so the declaratory judgment counts must be dismissed.

LiiON's motion did not address Vertiv's claims of breach of contract, breach of implied covenant of good faith and fair dealing, and promissory estoppel in relation to allegations that LiiON failed to comply with its promise to deliver lithium-ion battery cabinets to Vertiv customers.

Emerson Electric Co. — the former parent company of Liebert Corp., which struck a deal with LiiON in 2014 — **asked in November** to be let out of LiiON's lawsuit, saying its status as a former parent company makes liability a "factual impossibility" because it had sold Liebert before the trade secrets were allegedly misappropriated.

Representatives for the parties did not immediately return requests for comment Thursday.

LiiON is represented by James A. Karamanis and Kenneth A. Nazarian of Barney & Karamanis LLP.

Vertiv is represented by Joel Erik Connolly and Nicole E. Wrigley of Benesch Friedlander Coplan & Aronoff LLP.

Emerson Power and Emerson Electric are represented by Rudolph Anthony Telscher Jr., Erin Darnell Knese and Steven Edward Holtshouser of Husch Blackwell LLP.

The case is LiiON LLC v. Vertiv Group Corp. et al., case number 1:18-cv-06133, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Michael Phillis and Lauraann Wood. Editing by Adam LoBelia.